

# **Exhibit 511**

UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF WISCONSIN

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AUTHENTICOM, INC.,

Plaintiff,

-vs-

Case No. 17-CV-318-JDP

CDK GLOBAL, LLC and  
THE REYNOLDS AND REYNOLDS COMPANY,

Madison, Wisconsin  
June 28, 2017  
8:02 a.m.

Defendants.

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STENOGRAPHIC TRANSCRIPT OF THIRD DAY OF EVIDENTIARY HEARING  
HELD BEFORE CHIEF U.S. DISTRICT JUDGE JAMES D. PETERSON

APPEARANCES:

For the Plaintiff:

Godfrey & Kahn S.C.  
BY: JENNIFER L. GREGOR  
One East Main Street, Suite 500  
Madison, Wisconsin 53701

Kellogg, Hansen, Todd, Figel & Frederick, P.L.L.C.  
BY: MICHAEL N. NEMELKA  
AARON M. PANNER  
DAVID L. SCHWARZ  
DEREK T. HO  
JOANNA T. ZHANG  
JOSHUA HAFENBRACK  
KEVIN J. MILLER  
1615 M Street, N.W.  
Suite 400  
Washington, D.C. 20036

Jennifer L. Dobbratz, RMR, CRR, CRC  
U.S. District Court Federal Reporter  
United States District Court  
120 North Henry Street, Rm. 410  
Madison, Wisconsin 53703  
(608) 261-5709

APPEARANCES CONTINUED:

Also appearing: STEPHEN COTTRELL, Authenticom  
STEVE ROBB, IT Support

For the Defendant CDK Global, LLC:

Foley & Lardner  
BY: JEFFREY A. SIMMONS  
150 East Gilman Street  
Madison, Wisconsin 53701

Mayer Brown LLP  
BY: BRITT M. MILLER  
MATTHEW D. PROVANCE  
71 South Wacker Drive  
Chicago, Illinois 60606

Mayer Brown LLP  
BY: MARK W. RYAN  
1999 K Street, N.W.  
Washington, D.C. 20006

Also appearing: LEE BRUNZ, General Counsel, CDK Global, LLC  
NICK HEY, IT Support

For the Defendant The Reynolds and Reynolds Company:

Perkins Coie LLP  
BY: CHARLES G. CURTIS, JR.  
1 East Main Street, Suite 201  
Madison, Wisconsin 53703

Sheppard Mullin Richter & Hampton, LLP  
BY: MICHAEL P. A. COHEN  
2099 Pennsylvania Avenue, N.W.  
Suite 100  
Washington, D.C. 20006

Gibbs & Bruns LLP  
BY: AUNDREA K. GULLEY  
BRIAN T. ROSS  
BRICE A. WILKINSON  
1100 Louisiana Street, Suite 5300  
Houston, Texas 77002

Also appearing: ROBERT SCHAEFER and KELLY HALL,  
The Reynolds and Reynolds Company

1 provides that service. It does it actually better than the  
2 defendants do for a reason, and Authenticom charges 25 to \$50 a  
3 month for doing that service, or something on that order, and  
4 other competitive providers do too and charge the same, and so  
5 we know what that costs, and so that is not what the DMS  
6 providers are charging for. That is not why the DMS -- that is  
7 not why vendors are willing and forced to pay these outrageous  
8 fees.

9 And, you know, it's interesting actually, there's a case  
10 from the Seventh Circuit called *Assessment Technologies of WI v.*  
11 *WIREDdata*, and the cite is 350 F.3d 640, and it's a case that we  
12 cited in our reply papers, and it makes for very interesting  
13 reading. The case starts this way: "This case is about the  
14 attempt of a copyright owner to use copyright law to block  
15 access to data that not only are neither copyrightable nor  
16 copyrighted, but were not created or obtained by the copyright  
17 owner. The owner is trying to secrete the data in its  
18 copyrighted program, a program the existence of which reduced  
19 the likelihood that the data would be retained in a form in  
20 which they would have -- in which they would have been readily  
21 accessible. It would be appalling if such an attempt could  
22 succeed." Now -- so if Authenticom -- and I think that that  
23 analysis really applies quite well here.

24 Now, I don't want to anticipate an argument that's not going  
25 to be made by the defendants, but I do know that in the opening

1 Mr. Cohen referred to the Computer Fraud and Abuse Act, and  
2 there was a suggestion that somehow Authenticom was violating  
3 that federal statute. Now, we learned yesterday -- first of  
4 all, CDK has never -- didn't say that in their opening, and I  
5 assume they will not say it in their closing for lots of  
6 reasons, not least that CDK's contract permits dealers to  
7 authorize agents to access data under the contract, and the  
8 dealers had done so with CDK's express approval until CDK  
9 changed its mind about whether that was economical in 2015.

10 Now, Reynolds say that dealers shouldn't have granted  
11 Authenticom access, but that's a matter of contract, right? The  
12 dealers did authorize Authenticom to pull the data, and the  
13 federal statute is not a contract enforcement mechanism. But  
14 the more important point is this: If Reynolds could not  
15 lawfully restrict the dealers from authorizing Authenticom to  
16 access their data, if that was a violation of the antitrust  
17 laws, any issue about that federal statute just disappears,  
18 okay? In other words, what's important about this is that none  
19 of the defendants' arguments about contract law, about the terms  
20 of their agreements with the dealers, changed the calculus about  
21 the likelihood of success on the merits. If we've shown a  
22 likelihood that these provisions and this conduct violated the  
23 antitrust laws, then they can't enforce those provisions and --

24 THE COURT: Help me understand that. So let's just  
25 start, I guess, with a hypothetical, but not entirely

1       hypothetical, but Reynolds on its own independently, assuming  
2       that -- think of it as before February 2015. Reynolds -- I'll  
3       make it a question. Does Reynolds commit an antitrust violation  
4       by imposing a contractual restriction that prevents dealers from  
5       giving the usernames to Authenticom?

6               MR. PANNER: Yes.

7               THE COURT: Okay. And why is that?

8               MR. PANNER: Because, again, there's an integration  
9       services function that's being provided in the market. We  
10      learned that yesterday. Reynolds is using its market power in  
11      the DMS market to foreclose competition in the market for  
12      integration services. They're doing that in part by barring the  
13      dealer -- barring dealers from providing their data in an  
14      efficient way to Authenticom. They're also entering into  
15      contracts with vendors that bar those vendors from obtaining  
16      that data from Authenticom, using Authenticom's data integration  
17      services, and Reynolds has at that point over 30% of the market.  
18      They have substantial market power because the dealers are  
19      locked in --

20              THE COURT: So at that point it's a vertical exclusive  
21      dealing.

22              MR. PANNER: Exactly. It's also a vertical tying  
23      arrangement. Tying is actually also a per se violation of the  
24      antitrust laws. Again, these are the kinds of issues that get  
25      into the interesting antitrust stuff that, you know, that